

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: CS/CS/SB 688

INTRODUCER: Judiciary Committee, Criminal Justice Committee, and Senator Bennett

SUBJECT: Arrests and Arrestees

DATE: March 17, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Thompson</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates two additional circumstances where a law enforcement officer can arrest a person without a warrant. Arrests can be made without a warrant if there is probable cause to believe that the person has exposed his or her sexual organs in violation of s. 800.03, F.S., or if there is probable cause to believe that the person has committed an act of voyeurism in violation of s. 810.14 (1), F.S.

This bill also clarifies that when an inmate in a state prison is arrested for a criminal act, unless a court orders otherwise, the Department of Corrections will retain custody over that person until the immediate charge is disposed of or until the defendant's underlying sentence is completed, whichever occurs first. If the prisoner is required to appear in court, existing law (s. 955.17 (8), F.S.) will apply for the prisoner's custody and transportation.

This bill amends sections 901.15 and 907.04, Florida Statutes.

II. Present Situation:

Arrests Without Warrant

Arrest is defined as the taking of a person into custody by legal authority, especially in response to a criminal act.¹ The normal procedure for arrest involves the law enforcement officer

¹ Black's Law Dictionary (8th ed. 2004).

requesting a warrant from the trial court judge.² The sheriff then executes the warrant, and arrests the person.³ The arrest procedure is governed under Chapter 901, Florida Statutes. Currently, there are 15 circumstances where a law enforcement officer may arrest a person without a warrant. These arrests can occur for a range of actions from committing a felony (in the presence or not of the officer) to reasonable belief of child abuse and domestic violence.⁴

Custody of Criminal Defendants

Currently, if an inmate in a state institution is arrested for a criminal act, a law enforcement officer outside of the prison, generally the sheriff in the county where the alleged act occurred, goes to the prison and arrests the prisoner. The prisoner is then transported to the county facility for arrest proceedings. The inmate is later returned to the prison when he or she is no longer needed in court or an appearance is not scheduled in the near future. When the inmate is required to appear in court, the sheriff returns to the prison, assumes temporary custody of the inmate, and returns him or her to the county facility after the court proceeding.

In 2003, three inmates from Charlotte Correctional Institution were arrested for murdering Correctional Officer Darla Lathrem and another inmate while attempting to escape from the prison. Each inmate was serving a life sentence at the time of the murders and had a violent criminal history. After the murder but before being indicted, the inmates were transported to Florida State Prison in Starke, a maximum security prison. After the inmates were indicted for capital murder and escape, one of the defense attorneys moved to have the defendants transferred to Charlotte County jail to await trial, pursuant to s. 907.04, F.S. This section states that a person who is arrested and does not have the right to bail for the offense charged shall be delivered immediately into the custody of the sheriff of the county where the indictment, information, or affidavit is filed.⁵

The trial court interpreted s. 907.04, F.S., as mandating that the defendants should be held in the custody of the Charlotte County Sheriff in the county jail until disposition of the charges. The state attorney and sheriff objected. The defendants are currently housed in the Charlotte County jail and have been there for many months.⁶ Some prosecutors and members of the law enforcement community are concerned that a mandate such as the one in this case, that state prisoners must be housed in a county jail pending the resolution of new or additional charges, could present a financial hardship and security risk on some small facilities. It could be argued that the proper placement of those defendants would be in the state facilities where they had been lodged originally.

² Section 901.02, F.S.

³ Section 901.04, F.S.

⁴ Section 901.15 (1), (2), (7), and (8), F.S.

⁵ Section 907.04, F.S.

⁶ Dwight "Tommy" Eaglin was recently found guilty of the death of Darla Lathrem and another inmate in the same incident.

III. Effect of Proposed Changes:

Arrest Without Warrants

This bill creates two additional circumstances when an arrest can be made without a warrant. A person can be arrested without a warrant if there is probable cause to believe that the person has exposed his or her sexual organs in violation of s. 800.03, F.S. A person can also be arrested without a warrant if there is probable cause to believe that the person has committed an act of voyeurism in violation of s. 810.14(1), F.S.

In 2004, the Legislature created specific offenses relating to video voyeurism and video voyeurism dissemination, which are proscribed under a different statute from the offense of voyeurism. Because the bill does not cite to this other statute, s. 810.145, F.S., it does not appear to allow for arrests without warrants in cases of suspected violations of these specific offenses.

Custody of Criminal Defendants

This bill specifies that inmates who are in the custody of the Department of Corrections at the time of an arrest shall remain in the department's custody, unless otherwise ordered by the court. The defendant is to remain in the custody of the department until the pending charge is disposed of or until the underlying sentence expires, whichever occurs first.

If the inmate is required to appear in court, then s. 944.17(8), F.S., will apply. That section provides that the court will issue an order for the sheriff or chief correctional officer to assume temporary custody of the defendant and transport him or her to the county jail for an appearance. Before assuming temporary custody of the defendant, the law enforcement officer or his or her representative must present a copy of the court order to the officers of the facility where the defendant is housed.

This bill provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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